

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Market Test of Experimental Product— )  
Marketing Mail Made Easy )

Docket No. MT2011-3

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND  
VALPAK DEALERS' ASSOCIATION, INC.  
INITIAL COMMENTS REGARDING REQUEST FOR EXEMPTION FROM  
REVENUE LIMITATION ON MARKET TEST OF  
EXPERIMENTAL PRODUCT — EVERY DOOR DIRECT MAIL RETAIL  
(December 5, 2011)**

On November 18, 2011, the Postal Service filed a “Request of the United States Postal Service for Exemption from Revenue Limitation on Market Test of Experimental Product — Every Door Direct Mail Retail.” On November 23, 2011, the Commission issued Order No. 998 setting December 5, 2011 as the deadline for interested persons to submit comments on the Postal Service’s request. Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. (“Valpak”) hereby submit these comments.

**BACKGROUND**

On January 12, 2011, the Postal Service filed a notice of the market test of an experimental product, at the time called “Marketing Mail Made Easy,” and later changed to “Every Door Direct Mail Retail” (“EDDM-R”). Valpak submitted Initial Comments on February 4, 2011 and Reply Comments on February 15, 2011, opposing the Market Test.

The Postal Service did not request a waiver of the \$10 million revenue limit in its initial notice, not believing that threshold would be reached:

Exact volumes and revenues for [EDDM-R] are hard to project, since the extent of customer preference for the new

product over currently existing advertising options is unknown. Based on institutional knowledge, the Postal Service estimates the test will generate 10 to 20 million pieces per year in new volume. Given that volume estimate and the current pricing for Standard Mail saturation mail, the Postal Service at this time **does not anticipate revenues from this test to exceed \$10,000,000** in any fiscal year pursuant to 39 U.S.C. § 3641(e)(1). [Postal Service Notice, p. 7 (emphasis added).]

To be approved initially, subject to the \$10 million limitation, the Postal Service was required to show only that the product being tested met the following three criteria:

(1) Significantly different product. — The product is, from the viewpoint of the mail users, significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test.

(2) Market disruption. — The introduction or continued offering of the product will not create an **unfair or otherwise inappropriate competitive advantage** for the Postal Service or any mailer.

(3) Correct categorization. — The Postal Service identifies the product, for the purposes of a test under this section, as either market-dominant or competitive, consistent with the criteria under section 3642(b)(1). [39 U.S.C. § 3641(b) (emphasis added)].

Rejecting the arguments made by Valpak on criteria (1) and (2), on March 1, 2011, the Commission found that the Market Test should go forward. Order No. 687, pp. 8-11.

Thus far, the Postal Service has submitted two data collection reports: FY 2011, Quarter 3 (filed Aug. 9, 2011, revised Aug. 26, 2011) and FY 2011, Quarter 4 (filed Nov. 9, 2011).

**COMMENTS****I. THE MARKET TEST DOES NOT MEET THE CRITERIA FOR EXEMPTION FROM THE \$10 MILLION REVENUE LIMIT.**

The Commission may approve the Postal Service's request for a waiver only if the Commission determines the following three criteria are met:

- (A) the product is likely to **benefit the public and meet an expected demand**;
- (B) the product is likely to contribute to the **financial stability** of the Postal Service; **and**
- (C) the product is **not** likely to result in **unfair or otherwise inappropriate competition**. [39 U.S.C. § 3641(e)(2) (emphasis added).]

**A. There is no basis for the Commission to conclude that EDDM-R is contributing to the financial stability of the Postal Service.**

With respect to criterion (B), the Postal Service tracks revenues earned from EDDM-R, but has not even attempted to estimate the costs of handling this product. Devoid of cost data, the Postal Service simply assumes that the EDDM-R product has the same cost characteristics, and therefore the same coverage, as Saturation Flats. Insofar as EDDM-R mail has different characteristics than Saturation Flats (*e.g.*, mandatory entry at DDUs, mandatory simplified addressing, bundling, acceptance, permit waiver, third bundle treatment), this is an unwarranted assumption. The Commission should defer a determination on the \$10 million waiver until the Postal Service presents competent cost data concerning the specific product in question, as required by the statute.

**B. There are indications that EDDM-R is presenting unfair or otherwise inappropriate competition.**

Commission Order No. 687 approving the market test was predicated in large part on the existence of a \$10 million limit to belay concerns of market disruption, finding that: “MMME’s potential disruption in the marketplace is minimized by its limited duration and cap on revenues.” Order No. 687, p. 10. Now, the Postal Service seeks to waive the cap, and thereby eliminate this limitation on potential disruption in the marketplace.

Under criterion (C), the Postal Service cannot receive exemption from the \$10 million limit if EDDM-R is “likely to result in unfair or otherwise inappropriate **competition**.” 39 U.S.C. § 3641(e)(2) (emphasis added). This \$10 million waiver standard differs from the standard employed in approving a limited market test under 39 U.S.C. § 3641(b)(2). Thus, the Commission cannot rely on the previous determination in Order No. 687 that the market test “will not create an unfair or otherwise inappropriate **competitive advantage** for the Postal Service or any mailer.” The Commission must make a separate determination.

For exemption from the \$10 million revenue limit, the “unfair or otherwise inappropriate competition” standard appears to reflect Congress’ greater concern about unfair competition if a Market Test was to be substantial (over the \$10 million limit).<sup>1</sup> The idea of a “competitive advantage” ((b)(2)) is one of **positioning** of the Postal Service or a mailer to be able to compete better than another party. However, the idea of “unfair or otherwise

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<sup>1</sup> While a Market Test may be initiated without prior review by the Commission, waiving the \$10 million limit does require prior review and determination by the Commission.

inappropriate competition” ((e)(2)(B)) requires the Commission to assure that such **actual** competition is unlikely. This has not been established.

Healthy competition in and of itself is a fact of life, and drives cost cutting and innovation in the marketplace.<sup>2</sup> The Postal Service should be looking for ways to increase its revenue. However, the Congressionally-imposed limitation on the Postal Service’s competitive efforts should be strictly construed. Competition must be both fair and appropriate.

The Postal Service has marketed its EDDM-R product to include providing procurement of printing and mailing services. The Postal Service has been heavily promoting EDDM-R through a special website (<http://www.uspsverydoor.com/>),<sup>3</sup> hundreds of “grow your business days” seminars provided by local post offices, and a partnership with The UPS Store to have small businesses get their mailpieces prepared and printed.<sup>4</sup> The Postal Service does not provide this service and incur such costs for other Standard Mail.

## II. RATHER THAN GRANT THE REQUESTED WAIVER, THE COMMISSION SHOULD RECONSIDER THE MARKET TEST.

In Order No. 687, the Commission stated:

if experience shows otherwise, the market test can be terminated. Pursuant to 39 U.S.C. § 3641(f), the Commission retains the power to “order the **cancellation** of the test ... or take such other

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<sup>2</sup> See, e.g., CNBC, “All Eyes on Groupon,” Nov. 4, 2011, <http://video.cnbc.com/gallery/?video=3000055373>.

<sup>3</sup> See also <https://ribbs.usps.gov/index.cfm?page=simplifiedmail>.

<sup>4</sup> <http://www.marketwatch.com/story/the-ups-store-and-us-postal-service-team-up-to-promote-small-business-2011-09-22>

action as it considers appropriate” if any of the **conditions** described in 39 U.S.C. § **3641(b) are not met**. This authority represents an important remedial mechanism. [Order No. 687, p. 10 (emphasis added).]

**A. EDDM-R is not a significantly different product.**

With nearly nine months of experience of EDDM-R, it now should be obvious that EDDM-R is **not a significantly different product** from those otherwise available, but rather a slightly different product that is being repackaged and marketed differently (and more robustly) to small businesses. *See* Valpak Initial Comments, pp. 4-6. The only ways that it is a different product involved the provision of additional services to mailers and the waiver of certain acceptance requirements, which are the core of the unfair competition of this product. Indeed, at least a portion of EDDM-R appears to be volume gained by the migration of mail from shared mailers in large part due to the waiver of generally-applicable standards for mailers who deal directly with the Postal Service. Based on what is now known about the product, the Commission should reconsider its determination in Order No. 687 that the experimental product is a “significantly different product.”

**B. The data collection reports are inadequate to determine the effect of EDDM-R on the market and at a minimum should be revised.**

The data collection reports specified by the Commission in Order No. 687 and submitted thus far are inadequate to determine whether, and to what degree, cannibalization of business from other mailers and MSPs exists.<sup>5</sup> The reports indicate that a relatively small

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<sup>5</sup> Interestingly, the Postal Service has been promoting Every Door Direct Mail (not EDDM-R) to large businesses as an “alternative to competing services like ... shared mail programs for a lower cost.” *See* [http://www.uspseverydoor.com/assets/media/pdf/EDDM\\_LG\\_Brochure.pdf](http://www.uspseverydoor.com/assets/media/pdf/EDDM_LG_Brochure.pdf). Although not in the promotional literature for EDDM-R, the

proportion of participants in EDDM-R used the mail in some capacity within 90 days prior to using the experimental product. However, it is unclear how the Postal Service interprets the phrase having “used a different postal product or postal service.” Order No. 687, p. 13.

Read literally, this phrase likely would mean that the participants themselves entered their own mailpieces. It would not seem to trigger a “yes” response from a company which had been using the mail through a shared mail provider. Indeed, the degree to which cannibalization is occurring requires the Postal Service to know if it is drawing pieces from shared mail to be entered individually. The Commission should re-examine the Postal Service’s data collection plan to determine whether the type and quality of information the Postal Service is gathering with respect to EDDM-R are sufficient to ascertain if EDDM-R is adversely affecting existing mailers.

Further, Valpak has received anecdotal information from the field that certain EDDM-R mailings have been large — several multiples of the 5,000-piece limit. If true, this would appear difficult to achieve given the test’s 5,000-piece limit per delivery unit per day. The Commission should inquire into (i) whether the Postal Service has been following strictly the limitations that it purports to be a distinguishing characteristic of this Market Test, and (ii) whether the data collection system is adequate to ascertain if the system is being “gamed.” If the Commission learns that the Postal Service has waived this 5,000-piece limitation to allow some mailers to enter larger mailings than the Postal Service has told the Commission for this program, then the program is deeply flawed.

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Postal Service should assure the Commission that it is not doing the same for EDDM-R.

Respectfully submitted,

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